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## **COMMISSION STAFF WORKING DOCUMENT**

### **Review of the Commission Consultation Policy**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

#### **EU Regulatory Fitness**

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### EU Regulatory Fitness

#### 1. INTRODUCTION

The European Commission interacts with citizens in a variety of ways:

- Via the institutionalised mechanisms of **citizens' representation** through which the exercise of **power** at the EU level is organised.
- By collecting **expertise** from **specialists** and evidence from stakeholders to provide the scientific and practical **knowledge** required at different stages of the policy cycle<sup>1</sup>.
- Via the dialogue tools through which **citizens and stakeholders voice** their **opinions** on policy being planned, approved, transposed or evaluated.

The latter activities constitute what is commonly referred to as '**public consultations**' and are conducted in fulfilment of Treaty obligations.

#### General Framework for Public Consultations

According to Article 11 of the Treaty on European Union, 'the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent'.

Protocol no 2 on the application of the principles of subsidiarity and proportionality annexed to the Treaties stipulates that 'before proposing legislative acts, the Commission shall consult widely'.

Public consultations are a key tool for evidence-based policy-making throughout all of its stages: from when a policy is designed to when it is being approved, transposed, implemented, monitored and evaluated.

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<sup>1</sup> See the Guidelines on the collection and use of expertise by the Commission: COM(2002) 713. See also the public register of Commission expert groups:  
<http://ec.europa.eu/transparency/regexpert/index.cfm?do=faq.faq&aide=2>.

Accordingly, enhancing public consultations has been at the centre of the Commission's efforts to improve European governance and ensure better and smarter regulation. In 2002, the Commission set out principles and minimum standards for consulting external parties<sup>2</sup>. The application of the standards was examined in the March 2007 follow-up to the European Transparency Initiative<sup>3</sup>. The Commission announced in its 2010 Communication on Smart Regulation in the EU<sup>4</sup> its intention to further strengthen the voice of citizens and stakeholders by extending the minimum consultation period from 8 to 12 weeks as of 2012 and by carrying out a review of its consultation policy.

This document outlines the process and findings of this review after briefly describing current consultation practices. It concludes by identifying a set of possible measures to further improve the Commission's consultation practices. The review focuses on consultation processes that take place during the phase of policy-design –, as input to Commission decisions.

## 2. CURRENT PUBLIC CONSULTATION PRACTICES

### 2.1. Consultation Frameworks

The interaction between the Commission and interested parties can take many forms, and the methods for consultation and dialogue are adapted to different policy fields. In certain fields, specific consultation frameworks apply and supplement (or replace) less formalised processes.

#### 2.1.1. *Specific consultation frameworks*

Specific **consultation frameworks** can stem from the Treaties, other Community legislation, or be required under international agreements:

- Specific provisions exist for consulting the *social partners*<sup>5</sup>. According to Articles 153 – 155 of the Treaty on the functioning of the EU (TFEU), the Commission has the duty to consult European social partners (management and labour) prior to presenting any legislative proposal in the social field. The Treaty sets up a two-stage procedure whereby social partners are first consulted on the general direction of an initiative and later on its actual scope and content.
- Forms of *institutionalised dialogue* are most notably represented by the social dialogue committees<sup>6</sup> which are part of the network of European social partners and are consulted on policies that have a social impact on a specific sector. In

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<sup>2</sup> COM(2002) 704, 'General principles and minimum standards for consultation of interested parties by the Commission'.

<sup>3</sup> COM(2007) 127, 'Follow-up to the Green Paper "European Transparency Initiative"'.  
<sup>4</sup> COM(2010) 543, 'Smart Regulation in the European Union'.

<sup>5</sup> See <http://ec.europa.eu/social/main.jsp?catId=329&langId=en> for list of officially recognised representative European social partners organisations and for details on consultation of the social partners and of the social dialogue committees. See also Annex 5.2 of Impact Assessment Guidelines: [http://ec.europa.eu/governance/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm).

<sup>6</sup> Commission Decision 98/500/EC on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level.

addition, social partners are involved in some advisory committees specifically created to support the development of policies in particular areas<sup>7</sup>.

- The provisions of UNECE Aarhus convention may apply<sup>8</sup> to consultations that concern the **environment** or include an environmental aspect. According to such provisions, the public should be given the opportunity to participate during the preparation, modification or review of plans and programmes relating to the environment at a stage when all options are still open.
- During the legislative process, the Commission also consults the **European Economic and Social Committee** (representing various socio-economic organisations in Member States) and the **Committee of the Regions** (made up of representatives of local and regional authorities), and seeks the opinions of **national parliaments** and governments.
- In the areas where EU legislators have conferred implementing powers on the Commission, a specific framework applies when **consulting with comitology committees**. In such cases, prior to implementation, the Commission must consult a committee where every EU country is represented on the detailed implementing measures it proposes. The committee provides an opinion on the proposed measures which is more or less binding depending on the particular procedure specified in the underlying legal act.

#### 2.1.2. *Open and targeted consultations*

Consultations can be **targeted** at a specific category of stakeholders (consumers, SMEs, regions, social partners, etc.), or **open** to all interested parties. Targeted and open consultations, however, are not necessarily mutually exclusive and individual consultation processes may combine targeted and open phases depending on the policy-development stage and specific consultation objectives.

In practice, a combination of targeted and open consultations is most commonly used by the Commission services. The examination of some 260 impact assessments (IAs) has shown that open public consultations were used in three quarters of all cases, most often in combination with one or more rounds of targeted consultations. In the remaining 25 % of IAs examined, targeted consultation was carried out<sup>9</sup>.

## 2.2. **Consultation Tools**

The Commission uses a range of consulting instruments which include:

- Consultation documents adopted by the Commission (such as Green Papers<sup>10</sup>, White Papers<sup>11</sup> and social partners consultation documents);

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<sup>7</sup> For example, a tripartite consultation in the area of occupational safety and health is provided by the advisory committee on safety and health at work, which assists the Commission in the preparation, implementation and evaluation of activities in this field.

<sup>8</sup> Regulation (EC) No 1367/2006 of the European Parliament and the Council on the application of the provisions of the Aarhus convention to Community institutions and bodies.

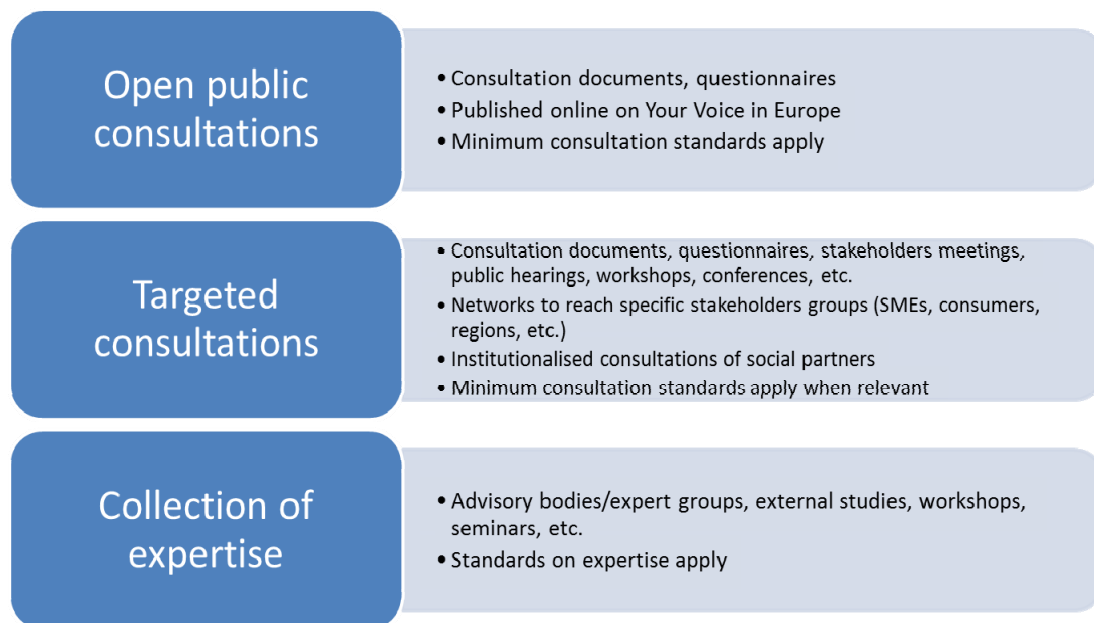
<sup>9</sup> See Chapter 3 section 3.2.1. for exact figures.

<sup>10</sup> Green papers are used at early stages of policy development to stimulate discussion on particular topics.

- Other consultation documents;
- Questionnaires with open-ended and/or closed questions<sup>12</sup>;
- Consultation meetings, workshops, hearings;
- Individual interviews;
- Surveys (for instance via the Eurobarometer tool<sup>13</sup>);
- Specific networks and platforms like the *Enterprise Europe Network*<sup>14</sup> to consult SMEs through the ‘SME panel’ tool<sup>15, 16</sup>, the *networks of the Committee of the Regions*<sup>17</sup>, various fora representing consumers<sup>18</sup> and other interest groups<sup>19</sup> etc.<sup>20</sup>;
- The Commission also frequently calls on external expertise to complement its in-house expertise, to ensure that EU policies have a sound knowledge base. It uses various ways to collect expertise, such as advisory bodies/expert groups, workshops, conferences, seminars, etc.

**Figure 1: Main consultation tools and methods used by the Commission**

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- <sup>11</sup> White papers set out a policy in a detailed and reasoned manner in order to prompt a debate and reach a political decision.
- <sup>12</sup> The Commission mainly uses the questionnaires developed under the IPM (Interactive Policy Making) initiative. It is a web-based application used to create and conduct surveys and public consultations over the web. It generates user-friendly questionnaires, making it easier both for respondents to participate in the consultations and for policy-makers to analyse the results.  
[http://ec.europa.eu/yourvoice/ipm/index\\_en.htm](http://ec.europa.eu/yourvoice/ipm/index_en.htm).
- <sup>13</sup> [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm).
- <sup>14</sup> <http://portal.enterprise-europe-network.ec.europa.eu/>.
- <sup>15</sup> In November 2011, the European Business Test Panel (EBTP) merged with the SME panel.
- <sup>16</sup> For example, specific SME consultation was carried out through the Enterprise Europe Network for the impact assessment on the alignment of 10 technical harmonisation directives with the new legislative framework for the marketing of products: SEC(2011) 1376.
- <sup>17</sup> Subsidiarity Monitoring Network and Europe 2020 Monitoring Platform. The consultation arrangements are defined in the updated Protocol on Cooperation between the Commission and the Committee of the Regions. The networks are used to consult regional and local authorities when significant regional and local aspects are at stake. For example, a specific survey on territorial impacts was coordinated by the Committee of the Regions for the preparation of the proposal for a programme for the environment and climate action (LIFE), see the relevant impact assessment: SEC(2011) 1542.
- <sup>18</sup> For example the European Consumer Consultative Group and the Network of European Consumer Centres.
- <sup>19</sup> The EU Health Policy Forum, the Forum for the better functioning of the Food Supply Chain and the Advisory Group on the Food Chain and Animal and Plant Health.
- <sup>20</sup> For example the Network on free movement of workers or the Network on training and reporting on European Social Security.



### 2.3. Consultation principles and standards

In 2002, the Commission identified a set of general principles for its relations with external parties and a number of minimum standards for consulting them during the process of policy design<sup>21</sup>. Principles and standards were devised to ensure that Commission services would carry out consultation in a transparent and coherent manner that encouraged the involvement of interested parties and enhanced the Commission's accountability.

The general principles identified for governing relations with stakeholders are participation, openness, and accountability, effectiveness and coherence. It is in the context of applying these principles that the Commission encouraged the organisations engaged in interactions with the European institutions to declare their interest and be registered in the register of interest representatives<sup>22</sup>.

The minimum consultation standards require that:

- Consultation documents are clear, concise, and include all necessary information (minimum standard A);
- All relevant parties have an opportunity to express their opinion (minimum standard B);
- Adequate awareness-raising publicity is ensured and communication channels are adapted to meet the needs of all target audiences (minimum standard C);
- Participants are given sufficient time for responses (minimum standard D);

<sup>21</sup> COM(2002) 704, General Principles and minimum standards for consultation of interested parties by the Commission.

<sup>22</sup> Transparency Register accessible at: [http://europa.eu/transparency-register/index\\_en.htm](http://europa.eu/transparency-register/index_en.htm). Those registered benefit from an automatic alert service for newly published consultations and roadmaps.

- Acknowledgement and adequate feedback is provided (minimum standard E).

With the exception of the lengthening of the minimum period for the reception of responses under minimum standard D from 8 to 12 weeks in 2012, standards and general principles have remained unchanged. They:

- Do not apply whenever a specific consultation framework is provided for by the Treaty, other European legislation or an international agreement.
- Apply mandatorily to Green papers and to all consultations carried out when preparing a new Commission proposal which is subject to an impact assessment. In this regard:
  - The provisions on public consultation in the context of impact assessments were strengthened as a result of the 2009 review of the IA guidelines. Services must now ensure that stakeholders can comment on a clear problem definition, subsidiarity analysis, description of the possible options and their impacts<sup>23</sup>.
  - The number of proposals subject to impact assessment has significantly increased over the years. IAs are now carried out for all initiatives likely to have significant impacts — whether they be Commission Work Programme items, proposals for legislative or spending activity, policy-setting initiatives or implementing measures.
- Are to be applied where possible in any other type of consultation that the Commission services may launch.

**Figure 2: Scope of minimum standards**

When are minimum standards applicable?	When are these standards not applied?
<ul style="list-style-type: none"> <li>• Consultations for initiatives that are subject to an impact assessment</li> <li>• Green papers</li> <li>• Services are encouraged to apply them to any other consultations they launch</li> </ul>	<ul style="list-style-type: none"> <li>• Specific consultation frameworks provided for in the Treaties (e.g. the roles of the institutionalized advisory bodies, the social dialogue) or in other Community legislation</li> <li>• Consultation requirements under international agreements</li> <li>• Decisions taken in a formal process of consulting MS ('comitology' procedure)</li> </ul>

<sup>23</sup>

See IA guidelines:

[http://ec.europa.eu/governance/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm).



## 2.4. Consultation management

The implementation of the Commission's public-consultation policy is decentralised to individual services. Commission services choose consultation tools and methods on the basis of consultation objectives, target groups and available resources. The responsibility for defining the most appropriate consultation strategy for specific initiatives lies with the lead service within the Commission.

This decentralised structure allows the Commission to properly take into account the specific nature of different policy areas. It also assigns responsibility for key decisions concerning consultation strategy to those who prepare the relevant policy initiative and have the best knowledge of the relevant stakeholders.

Central support to services is provided through a dedicated public consultation intranet website, offering practical guidance, common templates etc. Although there is no formal obligation to do so, the service responsible for the consultation sometimes involves other services in the preparation and management of public consultations (notably by sharing draft public consultation documents with the members of the relevant impact assessment steering group<sup>24</sup> for comments).

## 3. REVIEW OF THE COMMISSION PUBLIC CONSULTATION POLICY

### 3.1. Process

The review drew upon the evidence and proposals collected through:

- **A review of international standards and best practice**, notably the 2012 OECD 'Recommendation on Regulatory Policy and Governance'<sup>25</sup>.
- **An open consultation of external stakeholders**<sup>26</sup> — The public consultation on the implementation of smart regulation, which ran from 27 June to 21 September 2012 in 22 languages, posed 10 sets of questions on public-consultation policy (minimum standards, scope, timing, outreach, representativeness, feedback and results). 108 replies were received. A detailed overview of them is provided in the summary consultation document<sup>27</sup>.
- **Inputs from Commission services** — Internal discussions involving relevant Commission services<sup>28</sup> took place to draw upon their practical experience. The

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<sup>24</sup> Impact Assessment Steering Groups (IASG) bring together representatives of all Commission services with an interest in the development of an initiative. They are fully involved in all phases of impact assessment work.

<sup>25</sup> <http://www.oecd.org/gov/regulatorypolicy/49990817.pdf>.

<sup>26</sup> Consultation accessible at:  
[http://ec.europa.eu/governance/better\\_regulation/smart\\_regulation/consultation\\_2012/consultation\\_en.htm](http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_2012/consultation_en.htm).

<sup>27</sup> Summary consultation document accessible at:  
[http://ec.europa.eu/governance/better\\_regulation/smart\\_regulation/consultation\\_2012/consultation\\_docs\\_en.htm](http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_2012/consultation_docs_en.htm).

<sup>28</sup> Discussions at the Impact assessment working group meetings (IAWG is a network of officials who contribute to the Commission's impact assessment work and its coordination).

services were asked to provide their views on the minimum standards and on the usefulness of stakeholders' input, as well as to suggest how to exploit the full potential of public consultations undertaken for the impact assessment process, how to reach the right stakeholders and how to improve internal support for public-consultation purposes. A number of services provided additional written comments as a follow-up to the discussions.

- **An internal examination of current consultation practices** — Two sets of data were analysed:
  - All consultations published on the 'Your Voice in Europe' (YViE) portal between January 2010 and August 2012, in order to collect information on their actual duration, tools used, translation availability and publication of individual replies and summary reports. A subset of this data was used to analyse the clarity of the consultation questions used in the IPM questionnaires.
  - All impact assessments submitted to the Impact Assessment Board (IAB)<sup>29</sup> between January 2010 and August 2012, in order to assess the consultation methods used. A subset of this data<sup>30</sup> was used to analyse in more detail which aspects of IA stakeholders are usually consulted upon, and how useful their input is for the decision-making process.

### 3.2. Issues and findings

The review sought to assess whether, given the existing set of general principles for relations with stakeholders, current consultation standards and practices ensure that the right people are asked the right questions about the right initiatives, so as to feed into Commission decision-making in an efficient manner.

To address this general question, a sub-set of issues pertaining to (i) the design of individual public consultations, (ii) their openness and reach, and (iii) the use of their results, were identified and analysed. The main findings are discussed below on an item-by-item basis. Since these issues are often inter-related, improvement measures are often of a cross-cutting nature. They are discussed in section 4.

#### 3.2.1. Public consultation design

Consultation with interested parties increases the level of transparency and helps improve the quality of proposals if it taps into expertise and manages to balance opposing views and interests when identifying policy options and assessing their expected impacts.

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<sup>29</sup> The IAB provides independent quality control and quality support for Commission IAs.

<sup>30</sup> To draw 20 IAs for detailed assessment, stratified sampling from a population of 216 IAs examined by the IAB between January 2010 and mid-July 2012 (43 IAs for the sectoral spending programmes in the context of the multiannual financial framework for EU spending (2014-2020) were not included in the overall sample) was used. IAs were divided into 4 sub-groups reflecting the four areas of IA (microeconomic, macroeconomic, environmental and social). Each group was then sampled as an independent sub-population, out of which individual elements were randomly selected. Proportionate allocation was used — from each of the four sub-groups, a number of IAs that was proportional to the share of the sub-group in the total population was drawn.

To reap these benefits, the Commission consults widely: some 330 open public consultations took place between January 2010 and August 2012<sup>31</sup>; all impact assessments scrutinised by the IAB between January 2010 and mid-July 2012 were based on consultations (open (190), targeted or a combination of both).

Respondents to the public consultation generally considered that the Commission is consulting on the right **type of initiative**, agreeing with its approach to consult on all initiatives with significant impacts. They also acknowledged that existing minimum consultation standards are appropriate and generally respected in practice.

Some concerns were nevertheless expressed with respect to the **scope of individual consultations**. Several respondents indicated that, in some cases, consultations appeared to be unbalanced relative to different aspects of impact assessment. Some stakeholders asked for the Commission to consult on draft IAs.

The review of internal practices and the input from services indicate that the main challenge for consulting systematically and widely on all key aspects of an impact assessment is due to the difficulty of fitting **the timing of consultations** into the (political) calendar for policy-making. Services are also wary of the burden that several consultation rounds may impose.

In practice, services often tackle these challenges by using a **mix of targeted and open consultations**. Table 3 shows that for most initiatives subject to an impact assessment, an open public consultation was combined with additional targeted consultations. An internal assessment of a set of IAs confirmed that open public consultations are often held relatively early in the process, when there is no definitive view on final policy options and their impacts. Stakeholders are then consulted at later stages in a more targeted fashion (via stakeholder meetings, public hearings, workshops, conferences, surveys, advisory committees, expert groups or consultations of specific groups such as social partners, SMEs, consumers, etc.). Respondents to the public consultation stressed the importance of supplementing open public consultations with more targeted ones and of consulting at an early stage, as well as later in the process.

In cases where no open public consultation was carried out within the IA process, the nature of the initiatives justify the exclusive use of targeted consultations in the majority of cases, i.e. ‘narrow’ proposals with impacts limited to a specific sector, proposals with specific consultation requirements (such as eco-design consultation<sup>32</sup> or consultation of social partners) and proposals building on the results of other recent open consultations.

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<sup>31</sup> Consultations published on Your Voice in Europe.

<sup>32</sup> The comitology committees are consulted before preparation of the implementing measures setting ecodesign requirements for energy-related products. In addition, the Ecodesign Directive established the ecodesign consultation forum — a group of experts which allows stakeholders to be informed and provide their contribution on the implementation of the Ecodesign Directive. A consultation of the ecodesign forum replaces open public consultations.

**Figure 3: Type of consultation (open public consultation and targeted consultations)<sup>33</sup>**

Year	2010	2011	2012
<b>Consultations on YViE<sup>34</sup></b>	<b>97</b>	<b>130</b>	<b>101</b>
<b>Number of IAs</b>	<b>65</b>	<b>147</b>	<b>47</b>
<b>open public consultation<sup>35</sup></b>	<b>42</b>	<b>117</b>	<b>31</b>
<b>other types of consultation<sup>36</sup></b>	<b>38</b>	<b>96</b>	<b>26</b>
<b>no open consultation<sup>37</sup></b>	<b>23</b>	<b>30</b>	<b>16</b>
<b>other types of consultation<sup>38</sup></b>	<b>23</b>	<b>30</b>	<b>16</b>

Overall, these findings suggest that stakeholders could be better involved at a later stage in policy-making, and that they could be more consistently consulted on all key aspects of an IA. This could be achieved by further improving consultation planning, and by establishing clearer and more complete consultation strategies early in the policy-making process. These strategies should ideally address the whole policy-making process, clearly identifying what type of consultation is needed, for what purpose, at what stage, with whom and by means of which instruments.

### 3.2.2. Openness and reach

For consultations to provide useful and balanced input for policy design, it is essential to seek the whole spectrum of relevant stakeholders' views so as not to be unduly influenced by any specific interests. The challenges of reaching the right stakeholders and getting the necessary information from them are well known. First, consultation documents must be clear, complete and easily understandable by those to whom they are addressed. Secondly, target groups must be clearly identified and actively sought out, to ensure they are granted a real possibility of participating in the consultation.

<sup>33</sup> Source: Impact assessments scrutinised by the IAB between January 2010 and August 2012. 'Year' corresponds to the year in which the IAB examined the impact assessment. 'Other types of consultation' include: stakeholder meetings, public hearings, workshops, conferences, surveys, consultation of specific groups (SMEs, social partners, etc.), advisory committees, expert groups, etc.

<sup>34</sup> The year of consultation publication on YViE does not necessarily coincide with the year in which the IA was scrutinised by the IAB. Therefore it is not possible to match the figures from the YViE dataset with those of the IA dataset. However, it gives an indication that Commission consultations are not restricted to proposals accompanied by an IA.

<sup>35</sup> Out of total number of IAs.

<sup>36</sup> Out of number of IAs for which open public consultation was carried out.

<sup>37</sup> Out of total number of IAs.

<sup>38</sup> Out of number of IAs for which open public consultation was not carried out.

The review therefore assessed the quality and accessibility of consultation documents, looked at the ways in which communication channels are used to raise awareness about consultations, and assessed the experience with consultations targeted at specific stakeholders.

Concerning the **clarity and completeness of consultation documents**, some respondents to the public consultation indicated that documents were not always comprehensive and sufficiently clear, especially to the non-expert reader.

One particular need for improvement identified concerned the clarity of **IPM online questionnaires**. Several replies pointed out the limitations of IPM questionnaires and called for a more limited and careful use of these online tools. Cited limitations included insufficient predefined character spaces for answers, the use of leading questions and simple yes/no alternatives which do not allow stakeholders to express their views.

An in-house assessment of a set of questionnaires confirmed that questions could at times be formulated in clearer and simpler ways. As for frequency of use, Table 4 indicates that, overall, the use of consultation documents and the IPM questionnaire is balanced for the open public consultations (141 IPM questionnaires and 165 consultation documents, including Green and White papers). There may, however, be a trend towards greater IPM use.

Another recurring concern with regard to the accessibility of consultations was their **availability in different EU languages**. Stakeholders can provide answers to Commission consultations in any of the EU official languages but some respondents believe consultation documents should also be available in all languages.

The data, as indicated in the table below, shows that many consultations are already available in more than one language. Most Green Papers are translated into all languages. The Commission cannot undertake to make all consultation documents available in all EU official languages, because translation resources are limited and are primarily needed for the Commission's legal-translation obligations. Within these overall constraints, lead services assess which language versions are needed to ensure a particular consultation reaches the intended stakeholders.

**Figure 4: Consultation tools and available languages<sup>39</sup>**

Year	2010	2011	2012
Total number of consultations	97	130	101

<sup>39</sup> Source: Consultations published on Your Voice in Europe. 2012 data is until the end of August. 'Year' corresponds to the year of consultation end date, in line with the classification used in YViE portal. For 2010 and 2011, information on consultation languages was not available for 13 and 9 consultations respectively. For IPM questionnaires, it is not possible to know which languages other than EN were available unless pdf versions of questionnaires are still available online (number of such cases is indicated in the last entry in IPM questionnaire line).

<b>Consultation document</b>	1 language EN (31) 2-4 languages (10) 22 languages (6)	1 language EN (37) 2-5 languages (6) 21-22 languages (15)	1 language EN (16) 3 languages (2) 22 languages (17)
<b>Green Paper</b>	1 language EN (1) 3 languages (2) 13 languages (1) 22 languages (2)	22 languages (12)	3 languages (1) 22 languages (5)
<b>White Paper</b>	3 languages (1)	n/a	n/a
<b>IPM questionnaire</b>	2-6 languages (4) 23 languages (1) EN (25)	3-6 languages (8) 22-23 languages (3) EN (40)	1 language EN (25) 3-6 languages (8) 22 languages (3) EN (24)

Finally, giving interested parties enough time to voice their concerns and views is essential if consultations are to provide useful input for policy making. The introduction of a 12-week **consultation period** has been broadly welcomed by the respondents to the public consultation but some of them called for a stricter enforcement of its application. However, as shown in Table 5, Commission services generally comply with the time limits for consultation, the compliance rate being around 90 % for the three years assessed.

**Figure 5: Respect of consultation time limits<sup>40</sup>**

Year	Total number of consultations	Exact start date & end date known	8 / 12 weeks respected
<b>2010</b>	97	76	87 %
<b>2011</b>	130	113	96 %
<b>2012 (8 weeks)</b>	20	20	95 %
<b>2012 (12 weeks)</b>	81	81	89 %

As for the **tools used to reach stakeholders, roadmaps<sup>41</sup>** currently give advance warning of forthcoming policy initiatives and related consultations. This facilitates stakeholder involvement. Most respondents to the consultation appreciated this system of **consultation planning** but many stated they would welcome a dedicated

<sup>40</sup> Source: Consultations published on Your Voice in Europe. 2012 data is until end of August. 'Year' corresponds to the year of consultation end date, in line with the classification used in YViE portal. Consultation period is calculated as: [consultation end date — consultation start date]/7. Compliance with the time limit is considered when consultation period  $\geq 7.5$  (11.5) weeks.

<sup>41</sup> [http://ec.europa.eu/governance/impact/planned\\_ia/planned\\_ia\\_en.htm](http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm).

centralised consultation planning calendar. Some also pointed to overlapping consultations and asked for roadmaps to be regularly updated.

The Commission also widely publicises the launch of its consultations through its single access portal ‘Your Voice in Europe’. Some 330 consultations were posted on this portal between January 2010 and August 2012. Feedback received in the public consultation shows that this portal and the alert system linked to it are in practice the main tool used to learn about Commission consultations, although many also become aware of consultations through the individual websites of Commission directorates-general, or by alerts through existing stakeholder networks. Respondents frequently acknowledged the publication of all consultations on a single website as good practice. However, they also pointed to the need to widen the existing **alert mechanism** to include the publication of summary reports and to extend its availability to all interested parties, not only those registered in the Transparency Register.

In addition, efforts are also made to reach specific stakeholder groups. Simplified questionnaires are prepared for consulting SMEs and are translated and distributed to the target companies via the Enterprise Europe network partners in the Member States. A similar approach is used to consult local and regional authorities through the networks of the Committee of the Regions. Some services also use social media to communicate with interested parties or publicise new consultations in newsletters, press-releases or press events.

Respondents to the public consultation recognised the usefulness of such targeted tools but also pointed out their limitations in terms of the representativeness of replies and the transparency with which those asked to take part in a consultation are selected.

Some respondents also indicated that the Commission should advertise the consultations in a more proactive way, including via more systematic direct contacts with targeted stakeholders. The use of communication channels in Member States should also be explored.

### 3.2.3. *Use of results*

The review of sample IAs and the internal consultations with services confirmed that the input from consultations is generally **useful to the decision-making process**. However, this varies from case to case, depending upon a correct choice of consultation tools and whether efforts to reach all relevant stakeholders were successful. For instance, targeted consultations provide more useful input for ‘narrow’, technical proposals with impacts limited to clearly defined stakeholder groups, while open consultations are more suitable for cross-cutting topics and topics of general interest that directly affect citizens, workers and businesses across sectors.

In addition, to make sure results provide a well-balanced input, it is important to assess the representativeness and relative importance of different (categories of) respondents.<sup>42</sup>

As regards the respondents to public consultations, they clearly indicated that consulting when policy choices are still open is essential if public consultations are to shape policy-making rather than the opposite.

Many also stated there had been insufficient **feedback** and follow-up of their input. Providing timely and better quality feedback, clearly showing how and to what extent the input to the consultation influences policy shaping, would improve the transparency of the policy-development process and solicit better responses to consultations. Resource constraints, however, limit the extent to which the Commission can respond to individual concerns.

Nevertheless, as indicated in Figure 6, existing Commission minimum standards in this area should be better respected. Similarly, the recommendations of the Impact Assessment Board indicate that there is scope to improve the way in which stakeholder input is analysed in impact assessment reports. In 2011, the number of IAB recommendations relating to stakeholder consultation increased for the third year in a row, reaching 68 % of opinions in 2011<sup>43</sup>.

**Figure 6: Availability of individual replies and summary consultation reports<sup>44</sup>**

Year	2010	2011	2012
<b>No of consultations</b>	97	130	101
<b>Individual contributions</b>	Published (53) Not published (36) n/a (8)	Published (80) Not published (46) n/a (4)	Published (18) Not published (46) n/a (37)
<b>Summary report</b>	Published (42) Not published (47) n/a (8)	Published (74) Not published (53) n/a (3)	Published (15) Not published (49) n/a (37)

#### 4. REVIEW'S CONCLUSION AND WAYS FORWARD

Those who are affected by regulation or have to implement it are best placed to assess its costs and benefits. Hearing the concerns and proposals of citizens and stakeholders is therefore fundamental for smart regulation at all stages of the policy cycle.

<sup>42</sup> For instance, for social partner organisations to be consulted under Article 154 TFEU, the Commission conducts regularly the assessments of their representativeness.

<sup>43</sup> See 2011 IAB report: [http://ec.europa.eu/governance/impact/key\\_docs/docs/sec\\_2012\\_0101\\_en.pdf](http://ec.europa.eu/governance/impact/key_docs/docs/sec_2012_0101_en.pdf).

<sup>44</sup> Source: Consultation published on Your Voice in Europe. 2012 data is until end of August. 'Year' corresponds to the year of consultation end date, in line with the classification used in YViE portal for some consultations, information is not available as the relevant webpage links are no longer active, or consultations are still open (for 2012).



The Commission review of how it consults during the policy design phase has confirmed its consultation policy and its tools remain valid and fulfil international best standards<sup>45</sup>. The review has also confirmed the progress in implementation achieved since the introduction of the general principles and minimum standards in 2002.

Nevertheless, the analysis of current practices and the responses from stakeholders highlighted areas where further performance improvements should be sought.

Consultations do not always ask all the right questions and those who are affected by a policy do not always provide the answers needed. This is related to:

- The quality of the consultation documents used, particularly in the case of questionnaire-based consultations. Although efforts are made to ensure that consultation documents are detailed, comprehensive and unbiased, at times they lack clarity and/or questions may not allow for the full expression of stakeholder views.
- The trade offs between the early and late timing of open public consultations relative to the policy-design process. Both options have pros and cons but two rounds of open 12-weeks consultations would in most cases lead to consultation fatigue and excessive delay in policy-making.
- The cost and difficulty of reaching the relevant stakeholders. The time limit for consultation has already been extended, facilitating input from all, but greater efforts could be warranted in terms of more proactive advertising, more efficient communication strategies, more representative and transparent tools used for targeted consultation and better systematic feedback. Also, constrained administrative resources limit the extent to which key documents can be translated. Within these limits, the Commission will nevertheless strive to ensure a wider availability of translated consultation documents.

Addressing these problems would lead to further improvement in respecting the minimum standards and in the quality of the Commission's consultation processes. As a result, public consultation could even more efficiently support the impact assessment process and feed into the decision-making process. Given that the weaknesses are largely related to the implementation of the existing policy, the areas for improvement outlined below refer mainly to Commission processes. Measures and actions to be taken include:

#### *Adjusting the Minimum standards*

- While the current minimum standards remain valid, they will be revised to provide more practical, operational guidance. For example, they will clarify the exact scope of application of standards (for instance in case of targeted consultations or consultations in the context of ex-post evaluations). They will also set out criteria for shorter consultation rounds — either before or after a full 12-week open consultation — to facilitate more thorough consultation during the impact assessment process.

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See 2012 OECD 'Recommendation of the Council on Regulatory Policy and Governance'.

### *Improving Planning*

- Further facilitate stakeholders' responses by publishing a rolling calendar of planned consultations on the 'Your Voice in Europe' webpage. This could also help avoiding overlapping or repetitive consultations of the same target groups through different channels.

### *Using Innovative Consultation Tools*

- To supplement more standard document or questionnaire-based consultations, the use of new tools will be explored and more effective and efficient recourse to structured hearings and multi-staged consultations will be encouraged.
- Seek ways to better mobilize the existing communication channels through which Member States administration publicize national consultations so as to enhance the outreach to stakeholders.

### *Feedback*

- Feedback to consultations will be improved by developing alert systems to notify respondents at key stages in the follow-up policy-making cycle, by better reflecting the results of consultations in the IA reports, by strengthening the enforcement of the mandatory publication of a summary of public consultation responses, by developing a standard template for such summary (to ensure for instance an appropriate reflection of the contributions by different respondent groups) and by striving to ensure its more frequent translation in a wider set of languages.

### *Internal quality support and control*

- More support will be given to lead services to help them to design the best consultation strategy, identifying the best mix and use of consultation tools, and to improve the quality of consultation documents.
- Quality-control mechanisms will be strengthened.